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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/729,330

12/04/2003

Cameron A. Riddell

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7590

05/15/2008

JONES DAY

555 SOUTH FLOWER STREET FIFTIETH FLOOR
LOS ANGELES, CA 90071

EXAMINER

ROWAN, KURT C

ART UNIT

PAPER NUMBER

3643

MAIL DATE

DELIVERY MODE

05/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/729,330	Applicant(s) RIDDELL, CAMERON A.	
	Examiner Kurt Rowan	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. In view of the brief filed on 2/13/2008, PROSECUTION IS HEREBY REOPENED. The rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Peter M. Poon/

Supervisory Patent Examiner, Art Unit 3643

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3643

3. Claims 1-5, 7, 16, 17, 19, 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Bailey (WO 84/ 04022) .

The patent to Bailey shows a base having at least two areas that are a non-conductive material such as plastic base disclosed on page 5, line 6. Bailey discloses at least a pair of electricity conducting elements 19, 20 attached to the non-conductive areas of the base. Bailey discloses that each element is comprised of a plurality of smaller strands such as the flexible metal braid which may be "Monel" mesh are sewed to the base. Bailey shows the braided elements being attachable respectively by way of controller 10 to the positive and negative terminals of a power source such as a 12 volt battery disclosed in page 4, line 15. Since Bailey discloses that the mesh is flexible it appears that Bailey when the base is bent in convex or concave flex, that the compression or extension stress placed on the braided elements is substantially absorbed by individual strands expanding apart from or contracting towards one another.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6, 8-15, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey.

The patent to Bailey shows a bird deterrent device as discussed above. In reference to claims 6 and 8, Bailey discloses that the braid is sewed to the base, but it would have been obvious that other means of attachment could be employed such as gluing or screws or staples since the function is the same and the mere substitution of one known element for another to produce a predictable result has been held to be obvious. See *KSR Int'l v. Teleflex Inc.*, 82 USPQ2d 1385 (US 2007). In reference to claims 9-11, Bailey discloses "Monel" mesh as the braid, but does not disclose stainless steel, copper, or zinc coated copper strands. However, it would have been obvious to employ strands of these recited materials for the braid, since the selection of a known material is based on its suitability for the intended use. See *In re Leshin*, 125 USPQ 416. In reference to claims 12-13, Bailey discloses a plastic base, but it would have been obvious to employ polyvinyl chloride or an elastomeric material. See the citation to *In re Leshin*, above. In reference to claim 14, Bailey does not disclose a channel for the braided element, but does disclose a shielded position in line 10, on page 5. Hence, it would have been obvious to employ a channel within the base to shield the braided strand. The examiner takes Official Notice that channels for conductive strands is old and well known in the art. In reference to claim 15, Bailey discloses a Monel mesh which all of the strands are a conductive material, but it would have been obvious to employ a mixed strand with some of the elements being conductive and others being non-conductive to absorb stresses from uneven thermal expansion between the strands and the base.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kurt Rowan
Primary Examiner
Art Unit 3643

KR
/Kurt Rowan/
Primary Examiner, Art Unit 3643

<i>Application Number</i> 	Application/Control No.	Applicant(s)/Patent under Reexamination	
	10/729,330	RIDDELL, CAMERON A.	
	Examiner	Art Unit	
	Kurt Rowan	3643	